

Message Text

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TAGS: GATT, ETRD

SUBJ: COMMENTS ON BALANCE OF PAYMENTS PAPER

REF: GENEVA 613

1. AS PROMISED IN REFTEL, FOLLOWING ARE MISSION COMMENTS ON WASHINGTON G-18 PAPER ON GATT RULES AND PROCEDURES GOVERNING TRADE MEASURES FOR BALANCE OF PAYMENTS PURPOSES. MTN DEL HAS PARTICIPATED IN PREPARING THIS MESSAGE.

2. OVERALL PAPER IS MOST USEFUL AND COMPREHENSIVE. BELIEVE STATEMENT ON PAGE 2 THAT SUCCESS WILL DEPEND UPON THE WILL OF THE CONTRACTING PARTIES IS PARTICULARLY APPPOSITE. WE ALSO STRONGLY WITH ITEM 5 ON PAGE 3 THAT STATEMENTS OF REASONS FOR COMMITTEE'S CONCLUSIONS NEEDED. WISH TO OFFER FOLLOWING ADDITIONAL SUGGESTIONS.

3. PAGE 2 PARA AL: GATT HAS ALREADY ACCOMPLISHED DE FACTO ACCEPTANCE OF USE OF SURCHARGES AND PRIOR DEPOSITS. WE MAY NOT WISH UNDO THIS ACCOMPLISHMENT BY INVITING
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OTHERS TO RECONSIDER. WE SHOULD FLATLY STATE THAT DE

FACTO ACCEPTANCE IS WELL ESTABLISHED AND MOVE ON FROM THERE (SEE PARA 6 BELOW).

4. WE SUGGEST THAT PART H, PAGE 3 INCLUDE AN ITEM 6 RECOMMENDING THAT THE COMMITTEE BE AUTHORIZED TO FOLLOW UP AND SEE WHETHER RESTRICTIONS ARE BEING DISMANTLED.

5. THE TITLE OF SECTION II B ON PAGE 3 SHOULD OMIT REFERENCE TO SPECIFIC ARTICLES OF THE GATT, SINCE, AS DISCUSSED BELOW, A REVISION OF ARTICLE XV AND OTHER ARTICLES MIGHT BE NEEDED AS WELL.

6. PARA B1 ON PAGE 3, LAST LINE SHOULD BE CHANGED TO READ, "-REMAINS INCONSISTENT WITH ART XVIII AND A NARROW READING OF ART XII OF THE GATT." THIS IS IN LINE WITH OUR COMMENTS IN PARA 3 ABOVE. IF WE DO NOT EVENTUALLY SUCCEED IN GETTING ART XII AMENDED OR AN INTERPRETIVE NOTE ADDED TO IT, WE WOULD NOT WANT TO UNDO WHAT DE FACTO ACCEPTANCE NOW EXISTS BY MAKING A FLAT U.S. STATEMENT THAT SURCHARGES AND PRIOR DEPOSITS ARE INCONSISTENT WITH ART XII. (NOTE: IN FACT, ART. XII REFERS TO MEASURES WHICH RESTRICT THE QUANTITY OR VALUE OF IMPORTS. SINCE IT MAKES NO DIRECT REFERENCE TO QRS IN SPITE OF BEING SURROUNDED BY ARTICLES WHICH DO, A CASE COULD BE MADE THAT ART. XII IS NOT LIMITED TO QRS.)

7. EITHER PARAGRAPH B1 OR B2 ON PAGE 3 SHOULD NOTE THAT AS THE LIST OF ACCEPTABLE MEASURES BECOMES AMENDED, CORRESPONDING CHANGES PROBABLY ALSO NEEDED IN ARTICLES XIII AND XIV, TO EXTENT THEY WOULD CONTINUE TO GOVERN APPLICATION OF MEASURES TAKEN UNDER ARTICLE XII. (ALTERNATIVELY, ALL RULES GOVERNING APPLICATION OF BOP MEASURES COULD BE COLLAPSED INTO ARTICLES XII AND XVIII -- ALSO REQUIRING AMENDMENT OF XIV AT LEAST.)

8. WE SUGGEST THAT PART B INCLUDE AN ITEM 3 SUMMARIZING CHANGES WHICH MIGHT BE ENVISAGED IN ARTICLE XV DEALING WITH GATT-IMF RELATIONS. FOCUS IS NOT JUST GATT-FUND COOPERATION AT STAFF LEVEL, BUT COMMITMENT LIMITED OFFICIAL USE

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BY MANAGEMENT OF BOTH TO COOPERATE IN INTEREST OF CO-ORDINATED POLICY. SEPARATE OPERATIONAL PROBLEM POSED BY ARTICLE XV:2, IN DETERMINING EXTENT OF JUDGMENTS CONTRACTING PARTIES MUST ACCEPT FROM JUND, I.E., HOW MUCH FUND ADVICE BEYOND "STATISTICAL AND OTHER FACTS" IS WARRANTED. AS NOTED IN SCHOLARLY ARTICLES AND L/4200 (PARAS 11-19), GATT PRACTICE HAS EVOLVED TO FLAT ACCEPTANCE OF BOTH FACTS AND CONSLUSIONS/EVALUATIONS PRESENTED BY

IMF, LEAVING GATT IN SITUATION DESCRIBED IN PAGE 7 OF YOUR DRAFT PAPER WHERE IT DOES NOT UNDERTAKE INDEPENDENT ASSESSMENT OF GENERAL LEVEL OF TRADE RESTRICTIONS. AS THIS SITUATION AROSE IN EFFORTS TO INTERPRET ARTICLE XV, IT COULD BE UNAMBIGUOUSLY RESOLVED THROUGH APPROPRIATE AMENDMENT OF THAT ARTICLE. (WE ALSO NOTE IN PASSING THAT FUND ADVICE, WITH SOLE EXCEPTION OF U.S. 1971 SURCHARGE, GIVEN IN TERMS OF EFFECT OF TRADE MEASURES ON RESERVE LEVELS, NOT ON "BALANCE OF PAYMENTS POSITION" OF COUNTRY TAKING ACTION AS STATED PAGE 7, END OF 1ST PARA. DIFFERENCE IN WORDING RAISES WHOLE TANGLED QUESTION OF WHETHER INDICATORS OF BOP SITUATION OTHER THAN RESERVES NEED TO BE INCLUDED IN ANY REVISED RULES, AND IN LANGUAGE OF ARTICLES XII, XV, XVIII.)

9. SOMEWHERE IN SECTION III REFERENCE SHOULD BE MADE TO THE FACT THAT DISCRETIONARY LICENSING IS USED BY MANY COUNTRIES (ESPECIALLY LDCS). IN OUR VIEW THIS MEASURE SHOULD BE IDENTIFIED SEPARATELY FROM QRS - AS IS DONE IN THE NTB INVENTORY - SINCE IT IS POTENTIALLY MORE ONEROUS THAN QRS. MOST QRS ESTABLISH QUOTAS, PRESUMABLY ADMINISTERED BY LICENSING, WHILE DISCRETIONARY LICENSING SAYS MAYBE YOU'LL GET THE LICENSE AND MAYBE YOU WON'T. REFERENCE TO DISCRETIONARY LICENSING SHOULD BE INCLUDED IN PARA 2 ON PAGE 8 AS WELL.

10. RECOMMEND FIRST PARA ON PAGE 5 CARRY FOLLOWING ADDITION AT END: "ALSO, LONG-TERM IMPORT RESTRICTIONS BY OTHERS IMPEDE THE ABILITY OF SOME COUNTRIES TO SOLVE BOP PROBLEMS THROUGH EXPORT EXPANSION."

11. URGE THAT PARA IV A ON PAGE 5 BE REWRITTEN FROM THE LIMITED OFFICIAL USE

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THIRD SENTENCE ON TO REFLECT THE CONCERN WE RAISE IN PARAS 3 AND 6 OF THIS MESSAGE ABOUT TOO EXPLICITLY STATING THAT NON-QR MEASURES ARE ILLEGAL UNDER ART. XII.

12. WE SUGGEST SECTION C1, PAGE 7, BE REVISED TO REFLECT SIGNIFICANCE OF ARTICLE XV IN LEADING TO PRESENT SITUATION AND POSSIBILITY OF XV AMENDMENTS TO IMPROVE MATTERS, AS DISCUSSED ABOVE. QUESTION IS PRIMARILY EXTENT TO WHICH IMF JUDGMENTS SHOULD CONTINUE TO BE THE "LAST WORD" AS TO APPROPRIATENESS OF TRADE MEASURES IMPOSED FOR BOP REASONS. AS NOTED ABOVE, THERE IS ALSO QUESTION OF APPROPRIATE INDICATORS OF BOP SITUATION OTHER THAN RESERVES. FINALLY, SEPARATE PROBLEM OF GATT-IMF COORDINATION (DISCUSSED ITEM D, PAGES 8-9 OF YOUR PAPER) COULD ALSO BE ADDRESSED VIA

ARTICLE XV AND WOULD PROBABLY NEED TO BE, IF IMPROVEMENT
ON THIS POINT INTENDED TO BE MORE THAN JUST "PERIODIC
CONSULTATIONS AT STAFF LEVEL."DALE

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